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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 3675 of 2007
Date of decision: 5.11.2007

Dariya Singh **...Appellant**

Versus

Kehar Singh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. P.K.Gupta, Advocate for the appellant.

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RAJESH BINDAL, J.

The plaintiff is in second appeal before this Court against the concurrent findings of fact by both the courts below whereby suit filed by him for permanent injunction was dismissed.

The claim made in the suit is to restrain the defendants from interfering in the possession of the appellant and his brother Inder Singh on the Bara measuring 4 Biswa situated within the abadi of village Serdha, Teshil and District Kaithal. The claim was set up on the basis of the judgment and decree dated January 14, 1976 in favour of father of the plaintiff. The said decree was suffered by the respondents. The suit was contested by the respondents/defendants with the plea that the suit property is not situated within the Abadi deh of village rather it was alleged that the same is part of land comprised in Khasra Nos. 469, 470, 473 and 474, Khewat No.225 Min Khatoni No.544 Min, which was owned and possessed by defendant no.1, which was later on sold by him to the sons of defendants No.5 and 6.

On appreciation of evidence led by the parties, it was found by the Courts below that suit land was not infact situated within the Abadi deh of village but part of Khasra Nos. 469 to 474. Even the alleged compromise and the decree passed thereon way back on January 14, 1976 was not given effect to either by incorporating the name of father of the appellant as owner

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or even as the person in possession of the property in dispute. The said decree was not executed within the period of limitation. Not only this, even it was also found that vide alleged compromise on the basis of which earlier decree was passed, land of Gada Khad was to be given by the plaintiff therein to the respondents and in exchange thereof 4 marlas of land of Bara was agreed to be given to the defendants. However, nothing was brought on record to prove that the compromise was given effect to and the land of Gada Khad was given to the respondents in exchange of which 4 marla land of Bara was to be given to the plaintiff in the earlier suit. The appellant had not been able to prove his actual physical possession on the suit land what to talk about any entry in the records about the same. Not only this, even though the appellant was in knowledge of the fact that suit land had been sold by defendant no.1 to the sons of defendants no. 5 and 6 vide sale deed dated June 4, 1998 but inspite of the fact that the suit was filed on June 11, 1998 the fact of the sale deed was neither disclosed nor the vendees were impleaded as parties. The contention of the learned counsel for the appellant to the effect that even if decree passed in favour of the father of the appellant/plaintiff way back on January 14, 1976 was not given effect to in the revenue record but still the respondents had lost their rights on the suit property for the reason that they had already suffered a decree relinquishing their rights in the suit property. However, such an argument is just to be noticed and rejected being misconceived. In the present case as is found by the Courts below, it was not mere a decree granting certain rights in the property to the father of the appellant rather it was an exchange with other land, which was to take effect in future. Once it could not be proved on record that other land was given by the father of the appellant to the respondents that meant that compromise deed between the parties was not given effect to. In case the appellant wanted certain benefits out of the decree passed on the basis of a compromise, the proper course would have been to file execution of the judgment and decree, which was not filed till June 11, 1998 when the present suit was filed. No other issue was raised.

For the reasons mentioned above, I do not find any illegality has been

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committed by the Courts below in dismissing the suit filed by the appellant. No substantial question of law arises in the present appeal.

Accordingly, the appeal is dismissed.

November 05, 2007 **(Rajesh Bindal)**
Pka **Judge**